

**COURT OF APPEALS
DECISION
DATED AND FILED**

May 16, 2017

Diane M. Fremgen
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

**Appeal Nos. 2016AP1414-CR
2016AP1415-CR**

**Cir. Ct. Nos. 2014CF69
2014CF83**

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

JEFFERY DWAYNE SANDERS,

DEFENDANT-APPELLANT.

APPEALS from judgments and an order of the circuit court for Trempealeau County: JOHN A. DAMON, Judge. *Affirmed.*

Before Stark, P.J., Hruz and Seidl, JJ.

¶1 PER CURIAM. Jeffery Sanders appeals judgments sentencing him after revocation of his probation and an order denying his motion to reduce the sentences. The circuit court imposed the maximum consecutive sentences:

one-and-one-half years' initial confinement and two years' extended supervision for delivery of less than 200 grams of THC as a party to a crime, and three years' initial confinement and three years' extended supervision for felony bail jumping. Sanders contends the sentences are unduly harsh and unconscionable because they are out of proportion to the seriousness of the offenses. Because we conclude Sanders has not established an improper exercise of the sentencing court's discretion, we affirm the judgments and order.

¶2 According to the initial complaint, Sanders drove two juveniles to a location where he expected to exchange 22.455 grams of marijuana for stereo equipment. When one of the juveniles delivered the marijuana and was apprehended, he stated, "Jeff [Sanders] made me do it." After being arrested, Sanders was released on bond with a condition that he not reside at the same residence as the juveniles and have no contact with them. Sanders failed to appear for his initial appearance on that charge, and a warrant was issued for his arrest.

¶3 Sanders was found in a crawl space under the juveniles' residence. He refused to comply with an officer's order to come out of the crawl space, and the officer ultimately employed a taser to apprehend Sanders. Sanders continued to resist efforts to take him into custody by refusing to put his hands behind his back to handcuff him. In an additional complaint, Sanders was charged with obstructing an officer, resisting an officer, and four counts of felony bail jumping.

¶4 Pursuant to a plea agreement, Sanders entered no-contest pleas to delivery of less than 200 grams of THC as a party to a crime and one count of felony bail jumping. The remaining counts were dismissed and read in for sentencing purposes. In addition, an unrelated burglary charge was dismissed

outright. The court withheld sentence and placed Sanders on probation, and ordered him to have no contact with the juveniles or their mother.

¶5 Less than twelve hours after beginning his probation, Sanders was arrested for attacking one of the juveniles. The juvenile reported Sanders punched him with a closed fist and pushed him over a deck railing. The juvenile was able to grab the deck floor to prevent himself from falling. Sanders then stepped on the juvenile's fingers, causing him to fall to the ground and onto a large television set. Sanders told the juvenile he was "going to kill" the juvenile and his family. The juvenile was taken to the hospital by ambulance for treatment of his injuries.

¶6 Sanders' probation was revoked and he was returned to court for sentencing on the THC and the bail jumping charges. The State argued for the maximum consecutive sentences, emphasizing Sanders' character and the need to protect the public. The State noted Sanders' assaultive, intimidating treatment of the juvenile and sexually abusive treatment of the juveniles' mother, and noted Sanders had another pending felony case for sexual assault of a child. The State also noted Sanders' convictions for battery and domestic violence in Wisconsin and a second-degree homicide in Tennessee.

¶7 Sanders' counsel stressed the lack of gravity and severity of the offenses for which Sanders was being sentenced. He noted the relatively small amount of marijuana being delivered and characterized the statements of the juveniles and their mother as both unproven and self-serving. Counsel noted that, because Sanders was fifty-three years old, he was statistically less likely to commit further crimes.

¶8 The sentencing court considered the severity of the crimes, Sanders' character, and the need to protect the public. It considered the multiple

aggravating factors, including the read-in charges, Sanders' residing at the juveniles' mother's residence against her wishes, his history of violence including recent violent behavior, the presentence investigation report and COMPAS assessment, the short amount of time Sanders was on probation before he violated the terms of probation, and the failure of previous incarceration to diminish Sanders' willingness to break the law. For those reasons, the court imposed the maximum consecutive sentences.

¶9 Sentencing decisions are committed to the circuit court's discretion. *McCleary v. State*, 49 Wis. 2d 263, 278, 182 N.W.2d 512 (1971). There is a strong public policy against interference with the sentencing court's discretion, and sentences are afforded a presumption that the circuit court acted reasonably. *Id.* at 281. The primary factors to be considered are the gravity of the offenses, the defendant's character, and the need to protect the public. *Elias v. State*, 93 Wis. 2d 278, 284, 286 N.W.2d 559 (1980). The circuit court may attach varying weight to each of these factors. *Anderson v. State*, 76 Wis. 2d 361, 366-67, 251 N.W.2d 768 (1977). The defendant bears the burden of establishing that a sentence is excessive, unjustified, or unreasonable. *State v. Johnson*, 178 Wis. 2d 42, 53, 503 N.W.2d 575 (Ct. App. 1993). A sentence is excessive or unduly harsh only when it is "so excessive and unusual and so disproportionate to the offense committed as to shock public sentiment and violate the judgment of reasonable people concerning what is right and proper under the circumstances." *Ocanas v. State*, 70 Wis. 2d 179, 185, 233 N.W.2d 457 (1975).

¶10 The sentencing court appropriately considered the primary sentencing factors and gave greater weight to Sanders' character and the need to protect the public. Although the THC offense involved a relatively small amount of marijuana, the gravity of the offense increased by virtue of Sanders'

involvement of juveniles. His subsequent conduct and his prior record demonstrated his bad character. His violent assault on one of the juveniles and victimization of the juveniles' mother demonstrated the need to protect the public. Sanders challenges the credibility of the juveniles and their mother. At a sentencing hearing, the circuit court decides the credibility of witnesses. *State v. Turner*, 114 Wis. 2d 544, 550, 339 N.W.2d 134 (Ct. App. 1983). For the reasons the circuit court noted, imposition of the maximum consecutive sentences would not shock public sentiment nor violate the judgment of reasonable people concerning what is right under the circumstances.

By the Court.—Judgments and order affirmed.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)5. (2015-16). This opinion may not be cited under RULE 809.23(3)(b) (2015-16).

